



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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*Director*

August 18, 2015

Via Facsimile [845.692.7150] and USPS Regular Mail

Andrew J. Pskowski  
All State Dist. Northeast, Inc.  
190 Crystal Run Road  
Middletown, NY 10941

Re: Protest of Notice of Intent to Award  
RFP# 15-X-23463: Foods/Nonfoods: DOC Canteen/Commissary through DSS

Dear Mr. Pskowski:

This letter is in response to your letter dated July 1, 2015, on behalf of All State Dist. Northeast, Inc. (All State), to the Division of Purchase and Property (Division), in which you protest the Procurement Bureau's (Bureau) June 18, 2015, Notice of Intent to Award (NOI) for Solicitation #15-X-23463. In the protest letter, All State contends that Centric Group LLC d/b/a Keefe Supply Company (Centric), omitted relevant information regarding pending litigation against it from its proposal. With the protest, All State included a copy of Centric's *Disclosure of Investigations and Other Actions Involving Bidder Form* along with copies of public documents relating to a copyright infringement case filed against Centric on January 6, 2015. All State requests that the Division review the same.

In consideration of this protest, I have reviewed the record of this procurement, including the Request for Proposals (RFP), Centric's proposal, the protest, and relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest submitted by All State. I set forth herein my Final Agency Decision.

By way of background, the subject RFP was issued by the Bureau on behalf of the Department of Corrections (DOC) and Distribution and Support Services (DSS) to solicit proposals for the delivery and supply of various food and non-food items for the 14 DOC canteen/commissaries located in New Jersey's 13 prisons. (RFP § 1.1 *Purpose and Intent*). This RFP is a re-procurement of the DOC Canteen/Commissary contract which expired in May 2015. (RFP § 1.2 *Background*). "It is the intent of the Bureau to award contracts to those responsible bidders whose proposals, conforming to this RFP, are most advantageous to the State, price and other factors considered." (RFP § 1.1 *Purpose and Intent*). The Division opened proposals following the proposal submission deadline of April 8, 2015 at 2:00 p.m. Both All State and Centric received Notices of Intent to Award portions of this contract. This protest followed.

This solicitation was comprised of the RFP and other documents, one of which was the three-part document entitled *NJ Standard RFP Forms*. This document included the *Disclosure of Investigations and Other Actions Involving Bidder Form* which is addressed in RFP Section 4.0 *Proposal Preparation and Submission*, which provides in pertinent part:

The bidder should submit the Disclosure of Investigations and Actions Involving Bidder Form, one of the three forms in the downloadable RFP documents titled NJ STANDARD RFP FORMS with its proposal, to provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a bidder does not submit the form with the proposal, the bidder must comply within seven (7) business days of the State's request or the State may deem the proposal non-responsive.

[RFP § 4.4.2.2 *Disclosure of Investigations and Actions Involving Bidder Form.*]

With its proposal, Centric included a completed and signed *Disclosure of Investigations and Other Actions Involving Bidder Form*.

**STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY  
DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM**

Solicitation Number: 2015 x 23463 Bidder/Offeror: Centric Group LLC dba Keefe Supply Com

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**PART 1: PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR "NO" BOX. PLEASE REFER TO THE PERSONS AND/OR ENTITIES LISTED ON YOUR OWNERSHIP DISCLOSURE FORM WHEN ANSWERING THE QUESTIONS BELOW.**

**NON-PROFIT ENTITIES: PLEASE LIST ALL OFFICERS/DIRECTORS IN PART 2 OF THIS FORM. YOU WILL BE REQUIRED TO ANSWER THE QUESTIONS BELOW WITH RESPECT TO THESE INDIVIDUALS.**

	YES	NO
1. Has any person or entity listed on this form or its attachments ever been arrested, charged, indicted, or convicted in a criminal or disorderly persons matter by the State of New Jersey (or political subdivision thereof) or any other state or the U.S. Government?		<input checked="" type="checkbox"/>
2. Has any person or entity listed on this form or its attachments ever been suspended, debarred, or otherwise declared ineligible by any government agency from bidding or contracting to provide services, labor, materials, or supplies?		<input checked="" type="checkbox"/>
3. Are there currently any pending criminal matters or department proceedings in which the firm and/or its officers and/or managers are involved?		<input checked="" type="checkbox"/>
4. Has any person or entity listed on this form or its attachments been denied any license, permit, or similar authorization required to engage in the work applied for herein, or has any such license, permit, or similar authorization been revoked by any agency of federal, state, or local government?		<input checked="" type="checkbox"/>

IF ANY OF THE ANSWERS TO QUESTIONS 1-4 ARE YES, PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.  
IF ALL OF THE ANSWERS TO QUESTIONS 1-4 ARE NO, PLEASE READ AND SIGN THE FORM BELOW. NO FURTHER ACTION IS NEEDED.  
IF YOU ARE A NON-PROFIT, YOU MUST DISCLOSE ALL OFFICERS/DIRECTORS IN PART 2 BELOW.

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Centric checked "NO" in response to each of the four questions posed; therefore, no supplemental information was required in response to Part 2.<sup>1</sup> However, Centric did include the following statement with its proposal:

### Litigation

Keefe Commissary Network, L.L.C. ("KCN"), as part of the nation's leading supplier of food, personal care products, electronics, clothing and

<sup>1</sup> If Centric had responded "YES" to any of the questions in Part 1 it would have been required to submit additional information, as Part 2 of the *Disclosure of Investigations and Other Actions Involving Bidder Form* requires "[f]or Questions 1-4 answered "YES", you must provide a detailed description of any investigation or litigation, including but not limited to administrative complaints or other administrative proceedings, involving public sector clients during the past 5 years."

facility technology to the correctional market, is a defendant in civil lawsuits brought forth by inmates from time-to-time. Responsive pleadings are submitted on behalf of KCN that often result in the dismissal of those suits as the Court finds a reasonable business explanation that addressed the matter. There have been no judgments on the merits against KCN within the last five (5) years. There is no ongoing litigation where KCN has been directed not to disclose information by the Court. Case information pertaining to any matters in which KCN is a party is available to the general public.

In its protest letter, All State contends that Centric omitted relevant information in its response “to the disclosure statement on past and present ongoing investigations reflecting both government and private sector.” (July 1, 2015, protest letter). In support of the protest, All State provided the Division with a copy of a civil copyright infringement complaint to which Centric is defendant and an unrelated article.<sup>2, 3</sup> All State’s reading of the RFP disclosure requirements is overly broad. A civil complaint, between non-governmental entities, involving allegations of copyright infringement would not elicit an affirmative response to any of the questions on the *Disclosure of Investigations and Actions Involving Bidder Form* because the form seeks the disclosure of:

- (1) Whether any person or entity listed on the form has been arrested, charged, indicted, or convicted in a criminal or disorderly persons matter by any State (or political subdivision thereof) or the U.S. Government;
- (2) Whether any person or entity listed on the form has ever been suspended, debarred or otherwise declared ineligible by any government agency from bidding or contracting to provide services, labor, materials or supplies;
- (3) Whether there are any pending criminal matters or debarment proceedings in which the company and/or its officers and/or managers are involved; or
- (4) Whether any person or entity listed on this form or its attachments been denied any license, permit or similar authorization required to engage in the work applied for herein, or whether any such license, permit or similar authorization been revoked.

Therefore, disclosure of a civil copyright infringement complaint was not required to be made by Centric in its proposal. I note that Centric has not denied the existence of civil complaints against it, and provided a statement with its proposal indicating that information regarding the civil complaints in which it is party are available to the general public.

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<sup>2</sup> In that civil complaint (UMG Recordings, Inc., et aux. v. Centric Group, LLC et al., filed on January 6, 2015, the plaintiffs allege that Centric violated copyright law, the California Civil Code § 980(2), California Business and Professions Code §17200 and common law unfair competition, when it created ‘mix-tapes’ using sound recordings and musical compilations owned by plaintiffs.

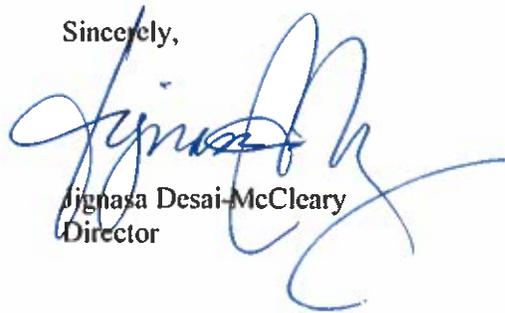
<sup>3</sup> With its submission All State included a copy of an article from MississippiWatchdog.org regarding a Mississippi prison bribery scheme that lead to an indictment being issued by the District Court for the Southern District of Mississippi-Northern Division. While the article mentions that Centric Group/Keefe Commissary Network had a contract with the Mississippi Department of Corrections, there is no allegation of wrongdoing against Centric/Keefe in the article. Further, research conducted by the Division in connection with this protest, including a review of the indictment referenced in the article (United States v. Epps and McCrory, Criminal Case No. 3:14-cr-00111-HTW-FKB), did not reveal an indictment or other criminal action filed against Centric or Keefe.

Moreover, I note that the products sought in the RFP<sup>4</sup> do not include audio or video recordings, or are in any way the same or similar in nature to the 'mix-tapes' which are the subject of the civil copyright infringement complaint. Therefore, it is unlikely that a similar copyright infringement issue would arise with respect to New Jersey's contract.

Based upon the foregoing, I find that the Bureau's June 18, 2015 NOI awarding certain line items to Centric is sustained. In addition I note that the Bureau's July 10, 2015, amended NOI awarding line items 247, 253, 256 to Centric is sustained; however the amended NOI awarding line item 260 is rescinded.<sup>5</sup> This is my final agency decision with respect to the protest submitted by All State Dist. Northeast, Inc.

The State of New Jersey looks forward to doing business with All State on this contract and thanks you for registering your company with **NJ START** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jignasa Desai-McCleary", is written over a printed name and title.

Jignasa Desai-McCleary  
Director

JD-M: RUD

c: D. Reinert  
J. Kemery

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<sup>4</sup> The following categories of products are sought by the RFP: beverage, grocery items, snack items, health items, personal items, stationary items, watches and watch batteries. (RFP § 3.1 *Product Groupings*).

<sup>5</sup> That NOI advised all bidders that the protest period for the amended NOI closed on July 24, 2015; no protests have been received by the Hearing Unit.